



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

CRANE MEMORIAL HOSPITAL
1310 S ALFORD
CRANE TEXAS 79731

DWC Claim #:
Injured Employee:
Date of Injury:
Employer Name:
Insurance Carrier #:

Respondent Name

BITUMINOUS CASUALTY CORP

Carrier's Austin Representative

Box Number 19

MFDR Tracking Number

M4-09-7333-01

MFDR Date Received

March 17, 2009

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The carrier is disputing reimbursement for pharmacy charges and medical supply charges in the amount of \$18,829.12. Carrier has been provided the emergency room record, which clearly states that that 4 units of the Anti-Venom drug Crofab was administered to the claimant on 8/25/08 after suffering a rattlesnake bite to the right ring finger. A copy of an invoice was provided which reflects the cost of 2 units of Crofab at a price of \$2,768.99 per unit. In this instance 4 units were administered which cost our facility \$11,075.96. The billed amount is \$18,829.12, which is a 1.7% mark-up not 340% as disputed. If the patient had not received the anti-venom drug Crofab, the results could have been detrimental to the patient's health. Documentation clearly justifies the billed amount and asks that reimbursement for the pharmacy charges be considered to be fair and reasonable."

Amount in Dispute: \$19,397.92

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Requestor billed a total of 19,948.67. Carrier has issued payments totaling \$153.51. Carrier's reimbursement includes fee guideline reduced reimbursement for the emergency department services billed under CPT 99283, tests billed under CPT 85025, 81001, and 80053, 36415. Carrier has disputed that reimbursement is owed under CPT 93000 for an ECG test. Carrier has also disputed reimbursement for pharmacy charges and medical supply charges the single largest charge was a charge of \$18,829.12, with only a general description 'Pharmacy Crofab' Requestor subsequently submitted an invoice showing a charge for Corfab of \$5537.98. Requester has not justified its billed amount of 340% of the invoiced charges as being a fair and reasonable reimbursement. Further, Requestor has not included any documentation of the procedures performed during the emergency room treatments."

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Date(s) of Service	Disputed Services	Amount In Dispute	Amount Due
August 25, 2008	Outpatient Hospital Services	\$19,397.92	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.403, titled *Hospital Facility Fee Guideline – Outpatient*, sets out the reimbursement guidelines for facility services provided in an outpatient acute care hospital.
3. 28 Texas Administrative Code §134.1 sets forth general provisions related to medical reimbursement.
4. Texas Labor Code §413.011 sets forth provisions regarding reimbursement policies and guidelines.
5. The services in dispute were reduced/denied by the insurance carrier with the following reason codes:
 - 182 – Reviewed as no charge
 - R95 – Procedure billing restricted/see Medicare LCD
 - RN – No paid under OPPS; services included in APC rate
 - B15 – Procedure/service is not paid separately
 - W1 – Workers' Compensation State Fee Schedule Adj
 - RB – No paid under OPPS; billed incorrectly
 - 168 – No additional allowance recommended
 - W4 – No additional payment allowed after review

Findings

1. The requestor submitted outpatient hospital services for date of service August 25th 2008. Per §134.403(f) "The reimbursement calculation used for establishing the MAR shall be the Medicare facility specific amount, including outlier payment amounts, determined by applying the most recently adopted and effective Medicare Outpatient Prospective Payment System (OPPS) reimbursement formula and factors as published annually in the *Federal Register*." Per, the National Plan and Provider Enumerator System, the healthcare provider Crane Memorial Hospital is designated as a "General Acute Care Hospital – Critical Access". A Critical Access Hospital is not reimbursed through the Medicare Outpatient Prospective Payment System (OPPS).
2. Per §134.403(e)(3) "If no contracted fee schedule exists that complies with Labor Code §413.011, and an amount cannot be determined by application of the formula to calculate the MAR as outlined in subsection (f) of this section, reimbursement shall be determined in accordance with §134.1 of this title (relating to Medical Reimbursement)." Because an amount cannot be determined by application of subsection (f) of §134.403, the reimbursement in this dispute will be decided pursuant to Texas Administrative Code §134.1.
3. This dispute relates to services with reimbursement subject to the provisions of 28 Texas Administrative Code §134.1, effective March 1, 2008, 33 *Texas Register* 626, which requires that, in the absence of an applicable fee guideline or a negotiated contract, reimbursement for health care not provided through a workers' compensation health care network shall be made in accordance with subsection 134.1(f), which states that "Fair and reasonable reimbursement shall: (1) be consistent with the criteria of Labor Code §413.011; (2) ensure that similar procedures provided in similar circumstances receive similar reimbursement; and (3) be based on nationally recognized published studies, published Division medical dispute decisions, and/or values assigned for services involving similar work and resource commitments, if available."
4. Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.
5. Former 28 Texas Administrative Code §133.307(c)(2)(F)(iii), effective May 25, 2008, 33 *Texas Register* 3954, applicable to requests filed on or after May 25, 2008, requires that the request shall include a position statement of the disputed issues including "how the Labor Code, Division rules, and fee guidelines impact the disputed fee issues." Review of the submitted documentation finds that the requestor has not discussed how the Labor Code, Division rules and fee guidelines impact the disputed fee issues. The Division concludes that the requestor has not met the requirements of §133.307(c)(2)(F)(iii).
6. Former 28 Texas Administrative Code §133.307(c)(2)(F)(iv), effective May 25, 2008, 33 *Texas Register* 3954, applicable to requests filed on or after May 25, 2008, requires that the request shall include a position statement of the disputed issues including "how the submitted documentation supports the requestor position for each disputed fee issue." Review of the submitted documentation finds that the requestor has not discussed how the submitted documentation supports the requestor position for each disputed fee issue. The Division concludes that the requestor has not met the requirements of §133.307(c)(2)(F)(iv).

7. Former 28 Texas Administrative Code §133.307(c)(2)(G), effective May 25, 2008, 33 *Texas Register* 3954, applicable to requests filed on or after May 25, 2008, requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the amount being sought is a fair and reasonable rate of reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement) when the dispute involves health care for which the Division has not established a maximum allowable reimbursement (MAR), as applicable.” Review of the submitted documentation finds that:
- The requestor’s position statement asserts that “The carrier is disputing reimbursement for pharmacy charges and medical supply charges in the amount of \$18,829.12. Carrier has been provided the emergency room record, which clearly states that that 4 units of the Anti-Venom drug Crofab was administered to the claimant on 8/25/08 after suffering a rattlesnake bite to the right ring finger. A copy of an invoice was provided which reflects the cost of 2 units of Crofab at a price of \$2,768.99 per unit. In this instance 4 units were administered which cost our facility \$11,075.96. The billed amount is \$18,829.12, which is a 1.7% mark-up not 340% as disputed. If the patient had not received the anti-venom drug Crofab, the results could have been detrimental to the patient’s health. Documentation clearly justifies the billed amount and asks that reimbursement for the pharmacy charges be considered to be fair and reasonable.”
 - The requestor did not submit documentation to support that a 1.7% mark-up is fair and reasonable reimbursement.
 - The requestor does not discuss or explain how the 1.7% mark-up supports the requestor’s position that the amount sought is a fair and reasonable reimbursement for the services in this dispute.
 - The Division has previously found that a reimbursement methodology based on hospital costs does not produce a fair and reasonable reimbursement amount. This methodology was considered and rejected by the Division, as stated in the *Acute Care Inpatient Hospital Fee Guideline* adoption preamble:

The Commission [now the Division] chose not to adopt a cost-based reimbursement methodology. The cost calculation on which cost-based models . . . are derived typically use hospital charges as a basis. Each hospital determines its own charges. In addition, a hospital’s charges cannot be verified as a valid indicator of its costs. . . . Therefore, under a so-called cost-based system a hospital can independently affect its reimbursement without its costs being verified. The cost-based methodology is therefore questionable and difficult to utilize considering the statutory objective of achieving effective medical cost control and the standard not to pay more than for similar treatment to an injured individual of an equivalent standard of living contained in Texas Labor Code §413.011. There is little incentive in this type of cost-based methodology for hospitals to contain medical costs. (22 *Texas Register* 6276)

Therefore, a reimbursement amount that is calculated based upon a hospital’s costs cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
 - The requestor did not submit documentation to support that payment of the amount sought is a fair and reasonable rate of reimbursement for the services in this dispute.
 - The requestor did not submit nationally recognized published studies or documentation of values assigned for services involving similar work and resource commitments to support the requested reimbursement.
 - The requestor did not support that payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for additional reimbursement is not supported. Thorough review of the submitted documentation finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

Conclusion

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under Division rules at 28 Texas Administrative Code §133.307. The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the services in dispute.

Authorized Signature

_____	_____	July 26, 2013
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.